

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NEW ENGLAND CARPENTERS HEALTH
BENEFITS FUND, PIRELLI ARMSTRONG
RETIREE MEDICAL BENEFITS TRUST,
TEAMSTERS HEALTH & WELFARE FUND
OF PHILADELPHIA AND VICINITY,
PHILADELPHIA FEDERATION OF
TEACHERS HEALTH AND WELFARE FUND,
DISTRICT COUNCIL 37, AFSCME -
HEALTH & SECURITY PLAN; JUNE SWAN;
MAUREEN COWIE and BERNARD GORTER,

Plaintiffs,

v.

FIRST DATABANK, INC., a Missouri
corporation, and McKESSON CORPORATION,
a Delaware corporation,

Defendants.

Civil Action: 1:05-CV-11148-PBS

Judge Patti B. Saris

EXPERT DECLARATION OF ROBERT D. WILLIG

[REDACTED]

EXPERT DECLARATION OF ROBERT D. WILLIG

I. INTRODUCTION AND SUMMARY OF CONCLUSIONS

1. In response to questions raised by the Court at the November 13, 2007 hearing in this matter, I have examined the available empirical evidence to test whether it supports Dr. Hartman's assumption of a constant relationship between the reimbursements paid at retail as recorded in Dr. Hartman's IMS data and the actual reimbursements paid by third-party payors ("TPPs"). Specifically, I have reviewed actual reimbursements on a drug/dose basis as reported in claims data for five TPPs and compared those reimbursements to payments reported in Dr. Hartman's IMS data. Based on that review and comparison, I have reached the following conclusions.

- There is not a constant relationship between retail payments captured by Dr. Hartman's IMS data and TPP reimbursements. Rather than being constant, the gap between IMS payments and TPP reimbursements grew over time.
- The prices reflected in Dr. Hartman's IMS data are not equivalent to the prices paid by TPPs. To the contrary, the IMS data show retail prices per unit (typically a pill) that are greater than prices paid by TPPs.
- Dr. Hartman's damages methodology using IMS data will necessarily overstate aggregate damages because it will fail to capture the increasing discounts off AWP at the TPP level.
- The specific inaccuracies from using the IMS data vary substantially across TPPs, and so using IMS data does not obviate the need for individual inquiries for each TPP.

II. DATA ANALYSIS

2. To respond to the Court's question about whether there is a constant relationship between pharmacy payments as reported in Dr. Hartman's IMS data and TPP reimbursements to PBMs, I compare prices (or reimbursements per unit, which is a pill for most drug/dose combinations in the data) in the IMS data with prices in specific TPP claims data on a drug-by-drug basis. Specifically, I look at claims data for GE Group Life Assurance Company ("GE"), Cigna, Pirelli Armstrong Retiree Medical Benefits Trust ("Pirelli"), Philadelphia Federation of Teachers Health and Welfare Fund ("Teachers") and Teamsters Health & Welfare Fund of Philadelphia and Vicinity ("Teamsters").¹ The comparisons show that the differences between the TPP and the IMS prices are not constant and instead change over time for each of the TPPs and for each of the drugs I look at. I also compare the effective discounts off AWP in the IMS data with the effective discounts in each of the TPP data sets.² These comparisons also show substantial and varying differences in effective discounts off AWP.

3. I have attached a series of figures that illustrate these findings. The drugs selected for the figures are the so-called "bellwether" drugs that Dr. Hartman focused on in the September

1. GE and Cigna are the TPPs whose data I analyzed for the October Willig Declaration and the November Willig Declaration. Pirelli, Teachers and Teamsters are named plaintiffs that provided data to Dr. Hartman. The GE and Pirelli data allow me to distinguish between retail and mail order. Therefore, I report retail transactions only for those two TPPs. The Cigna, Teachers and Teamsters data do not distinguish between retail and mail order transactions.

2. Effective discount off AWP is the percentage difference between the reimbursement and AWP. Therefore, the effective discount is the contractual discount off AWP (d) minus the dispensing fee (df) divided by AWP. Using Dr. Hartman's algebraic terms, the effective discount is $D = d - df/AWP$. Therefore, the effective discount is slightly smaller than the contractual discount. When the dispensing fee (df) is small relative to AWP, the effective discount is close to the contractual discount. For example, if a contractual discount is 16 percent, the dispensing fee is \$2 and AWP is \$100, then the effective discount is 14 percent ($14\% = 16\% - \$2/\100).

2007 Hartman Declaration and the October 2007 Hartman Report, although similar results are found with most of the high dollar-volume drugs included in Dr. Hartman's IMS data.³ Figures 1A – 1E show the differences between the IMS prices and the TPP prices. For example, in 2001, Cigna's price for Lipitor 10MG was approximately 19 cents below the IMS price. That difference increased to approximately 29 cents by 2004. There are three principal observations that arise from comparing the IMS prices to the TPP prices.

4. First, the differences between the TPP and the IMS prices tend to increase over time. This increased difference means that there is not a constant relationship between IMS prices and TPP prices over time. Instead, the IMS data systematically understate the increasing discounts that TPPs were able to get throughout the class period. The conclusion I draw from the examination of these data is that Dr. Hartman's methodology relying on the IMS data necessarily leads to an overstatement of aggregate damages by missing the declines in TPP reimbursement growth over time.

5. Second, the differences between IMS and TPP prices vary substantially across TPPs. This variation implies that using the IMS data does not obviate the need for an individualized damages analysis. Instead, determination of damages for each TPP will require examination of each TPP's data and renegotiation circumstances.

6. Third, the data indicate that the IMS prices are greater than the TPP prices for each of these drugs. These results run counter to any view that the IMS data accurately measure PBM payments to retailers and that PBMs earn a zero or positive profit margin on TPP transactions. If PBMs earned a zero or positive profit margin, this would imply that TPPs'

3. Appendix 1 lists the five TPPs' prices, differences in prices compared with IMS, by year for the 25 largest drug/dose combinations based on dollar volume in the IMS data. The five "bellwether" drugs are among the top 25 drug/dose combinations based on dollar volume.

payments to PBMs would be greater than or equal to PBMs' payments to retailers. The apparent negative spread is consistent with my observation that the IMS data are diluted, as discussed in the October Willig Declaration, at ¶¶40-42, and the November Willig Declaration, at ¶¶28-29, and therefore do not accurately measure PBM transactions at retail. Consequently, even if Dr. Hartman's constant relationship assumption were valid, the IMS data that he uses do not show actual PBM payments and hide any decreases in those payments that were responses to the increased AWP/WAC ratio. As a result, using Dr. Hartman's IMS data to calculate aggregate damages will necessarily lead to a systematic overstatement of damages.

7. In addition to showing varying differences in prices, the data show that the effective discount in the IMS data (which is generally 4 to 7 percent) is well below the true effective discount at either the PBM level or the TPP level.⁴ To illustrate this point, I attach a series of figures (Figures 2A-2E) showing the differences in effective discounts between IMS and each TPP.⁵ The data displayed in these figures show that the IMS data understate the effective discount by 1 to 13 percentage points compared to actual TPP reimbursements as reported in the claims data. The figures also show that these differences are not constant for

4. The IMS data show effective discounts generally in the range of 4 to 7 percent for each drug, while it is well understood that contractual discounts off AWP are typically above 13 percent. For example, Dr. Hartman states in the AWP MDL that the contractual discount ranges from 13 to 17 percent. Declaration of Raymond S. Hartman in Support for Plaintiffs' Motion for Class Certification, September 3, 2004. Dr. Hartman acknowledges in the March 2007 Hartman Rebuttal Declaration (at fn 15) discounts off AWP that range between 14 and 18 percent. Dr. Hartman further states in the March 2007 Hartman Rebuttal Declaration (at ¶27): "[d]ispensing fees at retail range from \$2.50 to \$1.95 and at mail order range from \$1.82 to \$0.41." As I noted above in fn 2, a low dispensing fee relative to AWP implies that the effective discount will be slightly lower than the contractual discount. So, for example, if the AWP is \$100, dispensing fee ranges from \$1.95 to \$2.50, and the contractual discount ranges from 13 to 18 percent, then the effective discount will range from 10.5 to 16.1 percent.

5. The underlying discounts for Figures 2A – 2E are listed in Appendix 2.

most drugs and TPPs, with the differences generally increasing over time. These results provide further refutation of Dr. Hartman's constant relationship assumption by showing that the IMS data do not capture the truth – that discounts at the TPP level are increasing over time. Consequently, Dr. Hartman's use of the IMS data would systematically overstate aggregate damages.

8. In summary, the data for the five TPPs that I have examined clearly refute Dr. Hartman's constant relationship assumption. Furthermore, the data indicate that Dr. Hartman's methodology relying on his IMS data will necessarily lead to an overstatement of aggregate damages.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of November 2007, in Princeton, New Jersey.

Robert Willey

FIGURE 1A

Difference between IMS and TPP Prices (2001 – 2004)

Drug = LIPITOR Strength = 10MG

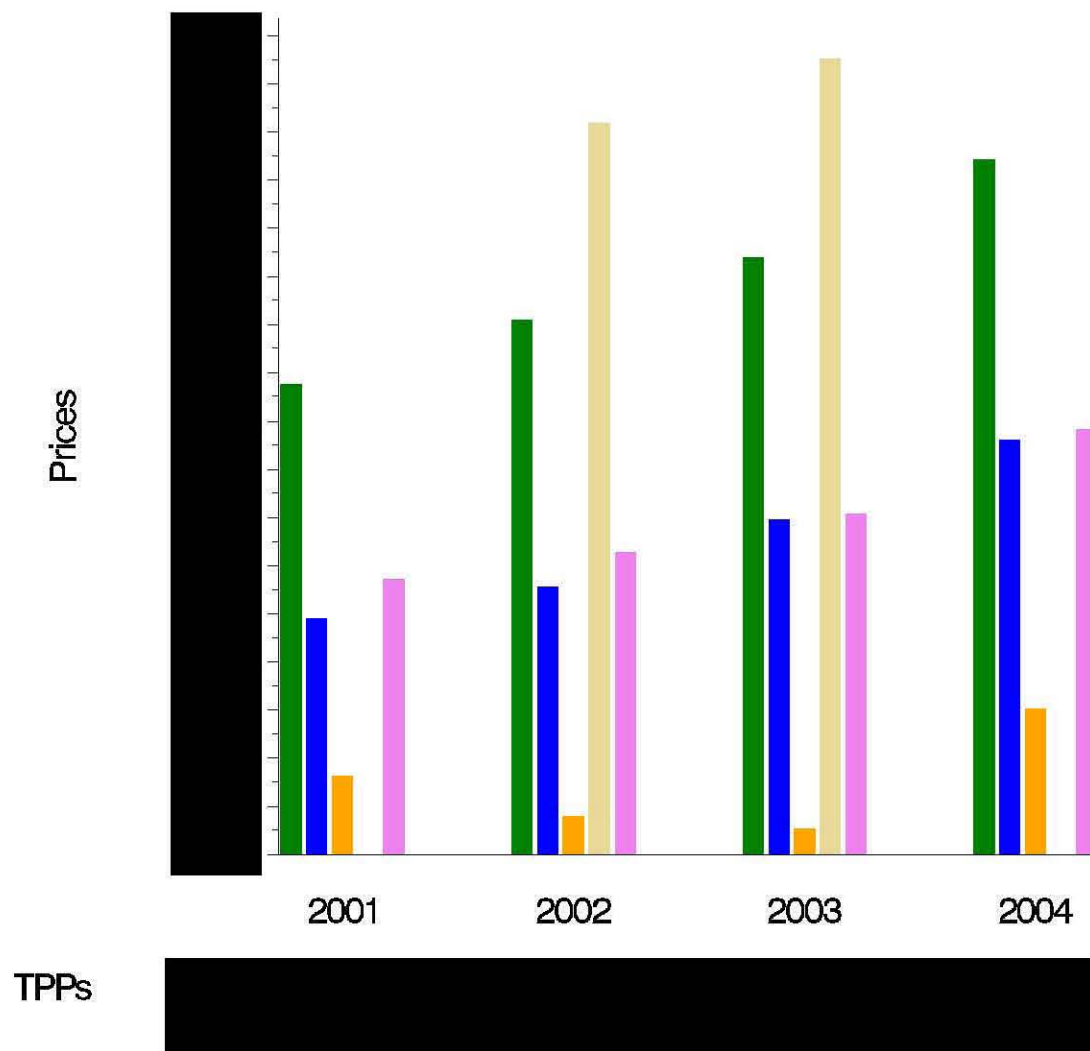


FIGURE 1B

Difference between IMS and TPP Prices (2001 – 2004)

Drug = LIPITOR Strength = 20MG

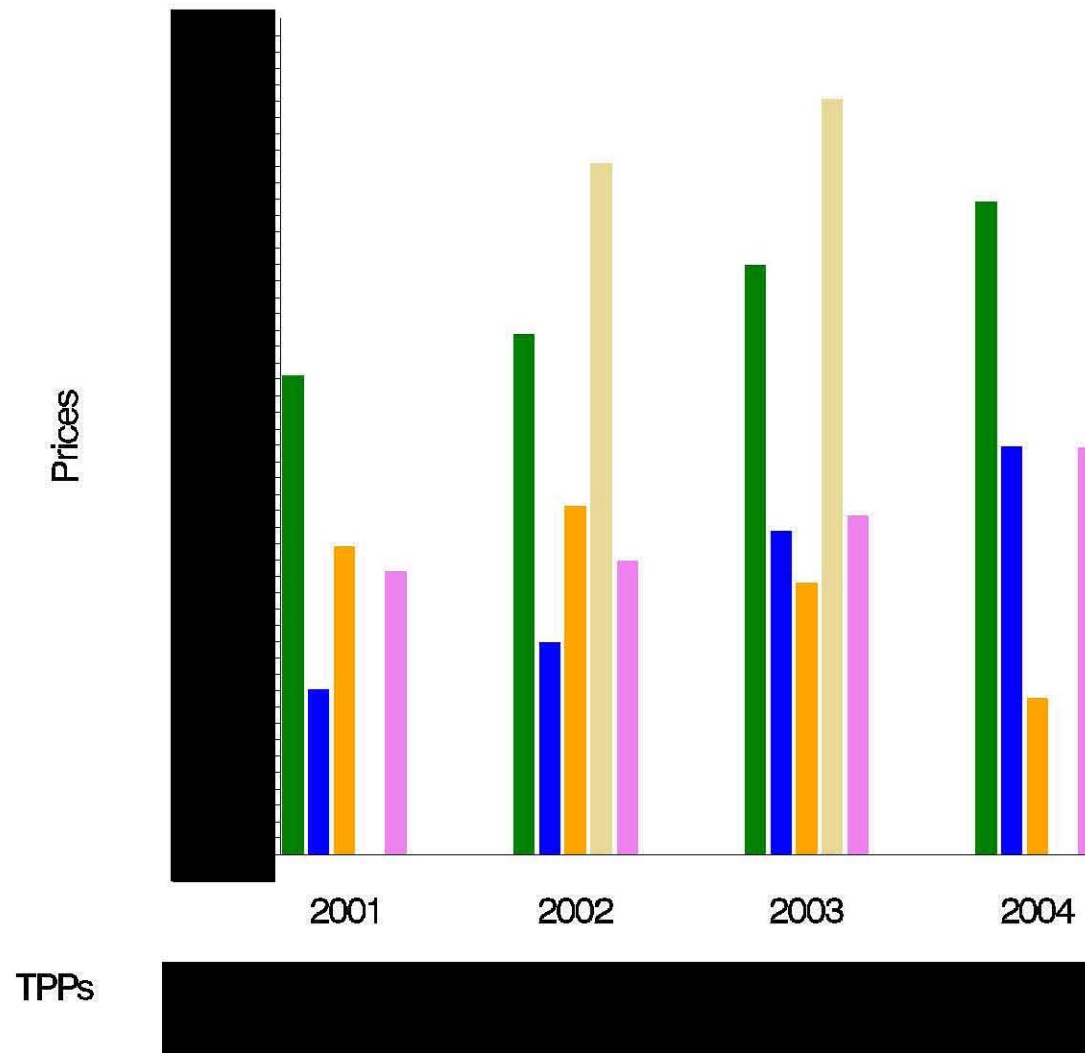


FIGURE 1C

Difference between IMS and TPP Prices (2001 – 2004)

Drug = PLAVIX Strength = 75MG

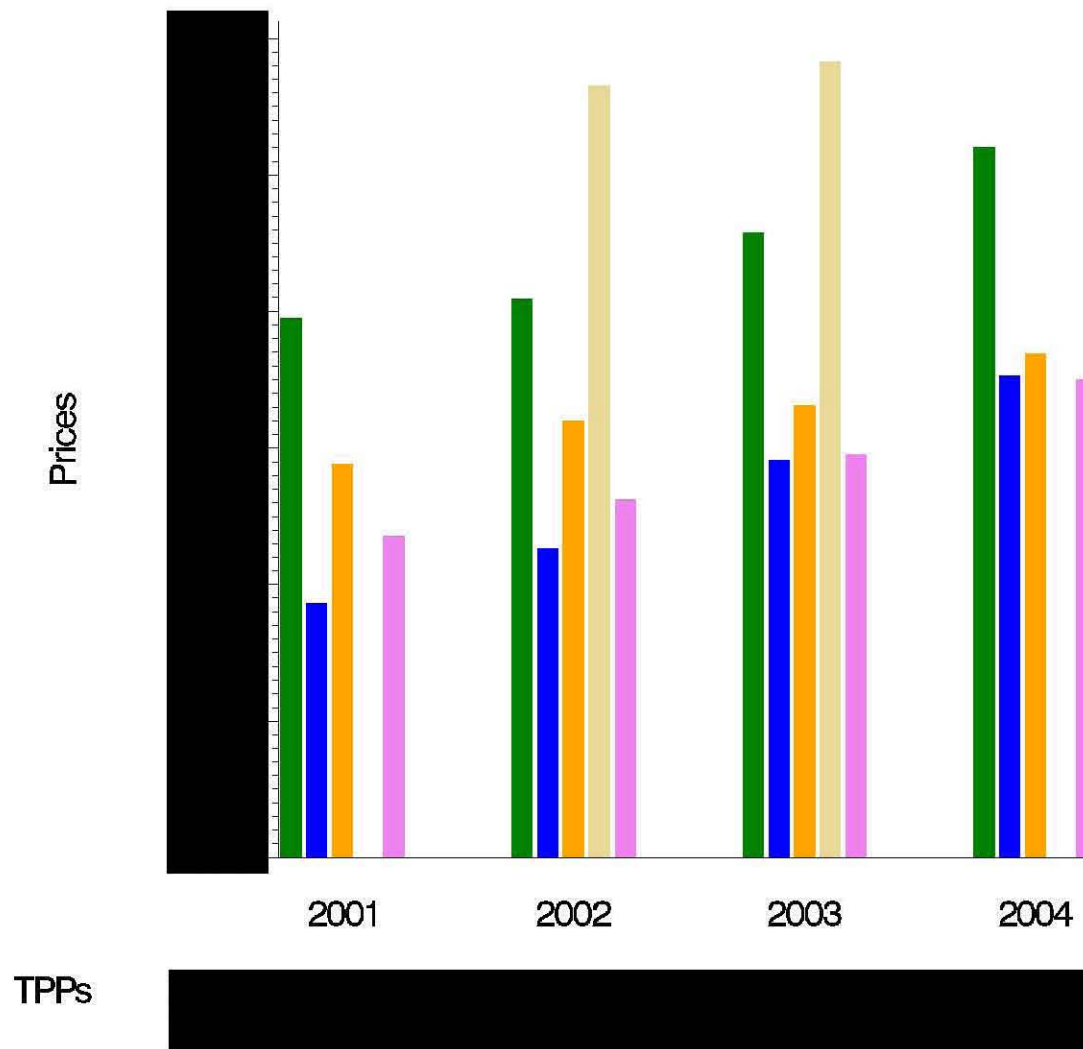


FIGURE 1D

Difference between IMS and TPP Prices (2001 – 2004)

Drug = PREVACID Strength = 30MG

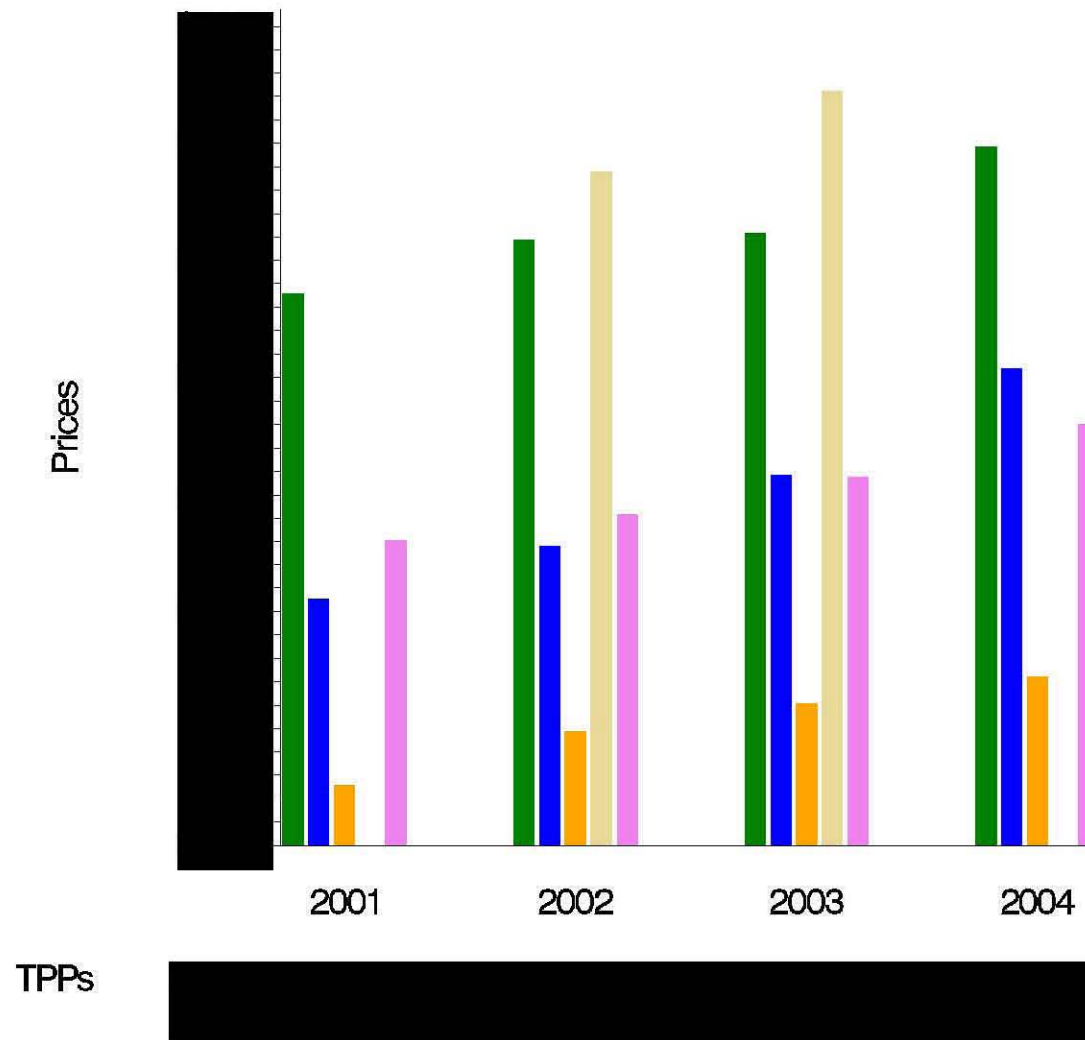


FIGURE 1E

Difference between IMS and TPP Prices (2001 – 2004)

Drug = WELLBUTRIN SR Strength = 150MG

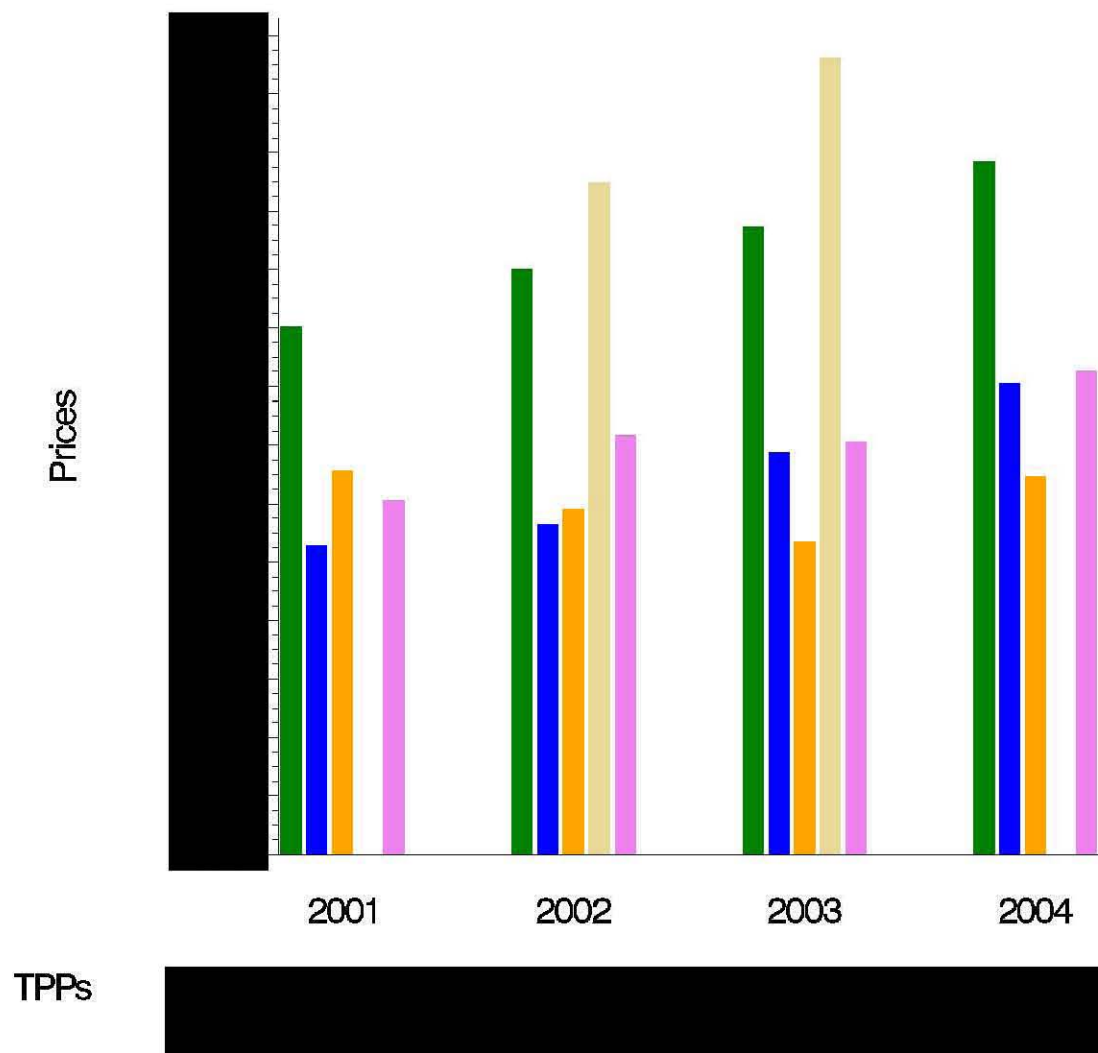


FIGURE 2A

Difference between TPP and IMS Effective Discounts (2001 – 2004)

Drug = LIPITOR Strength = 10MG

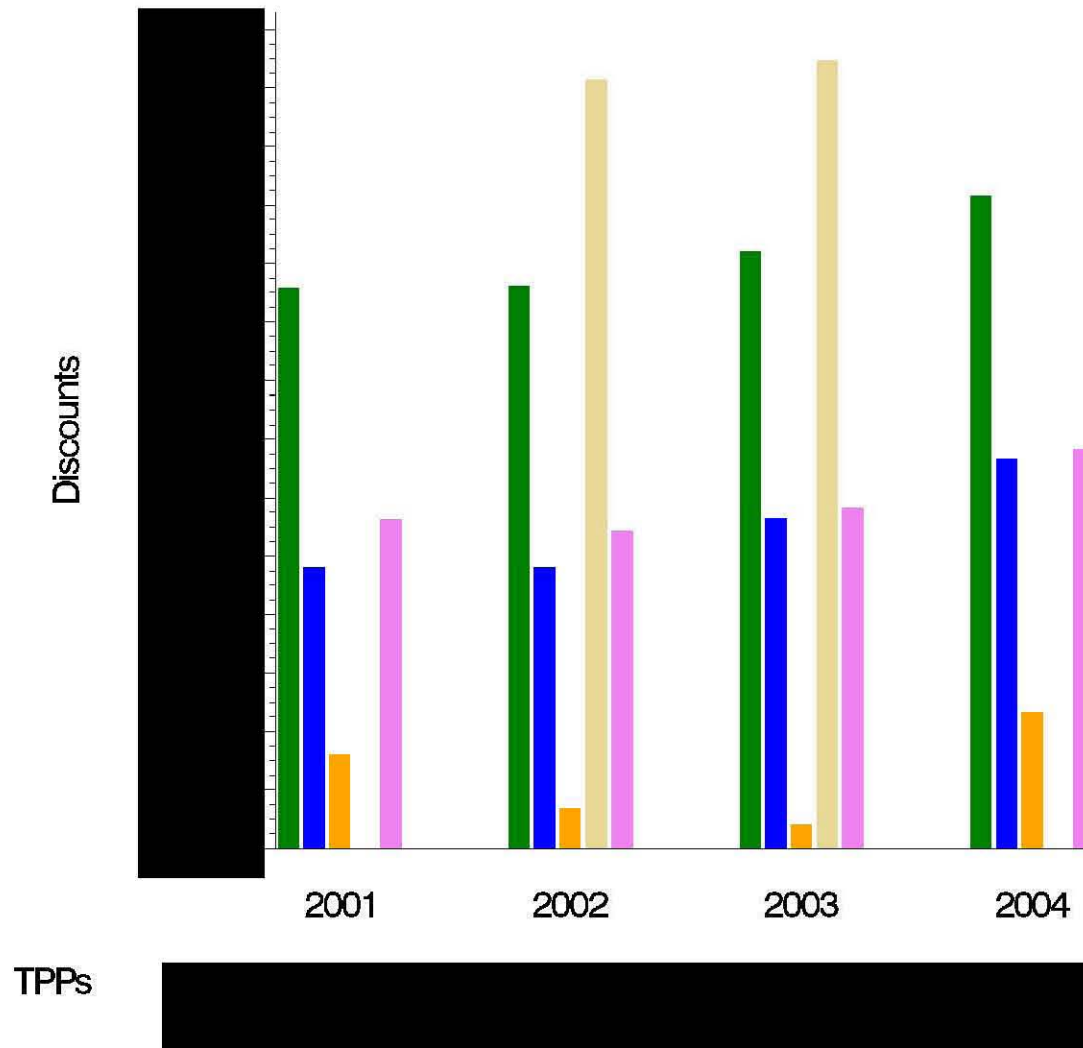


FIGURE 2B

Difference between TPP and IMS Effective Discounts (2001 – 2004)

Drug = LIPITOR Strength = 20MG

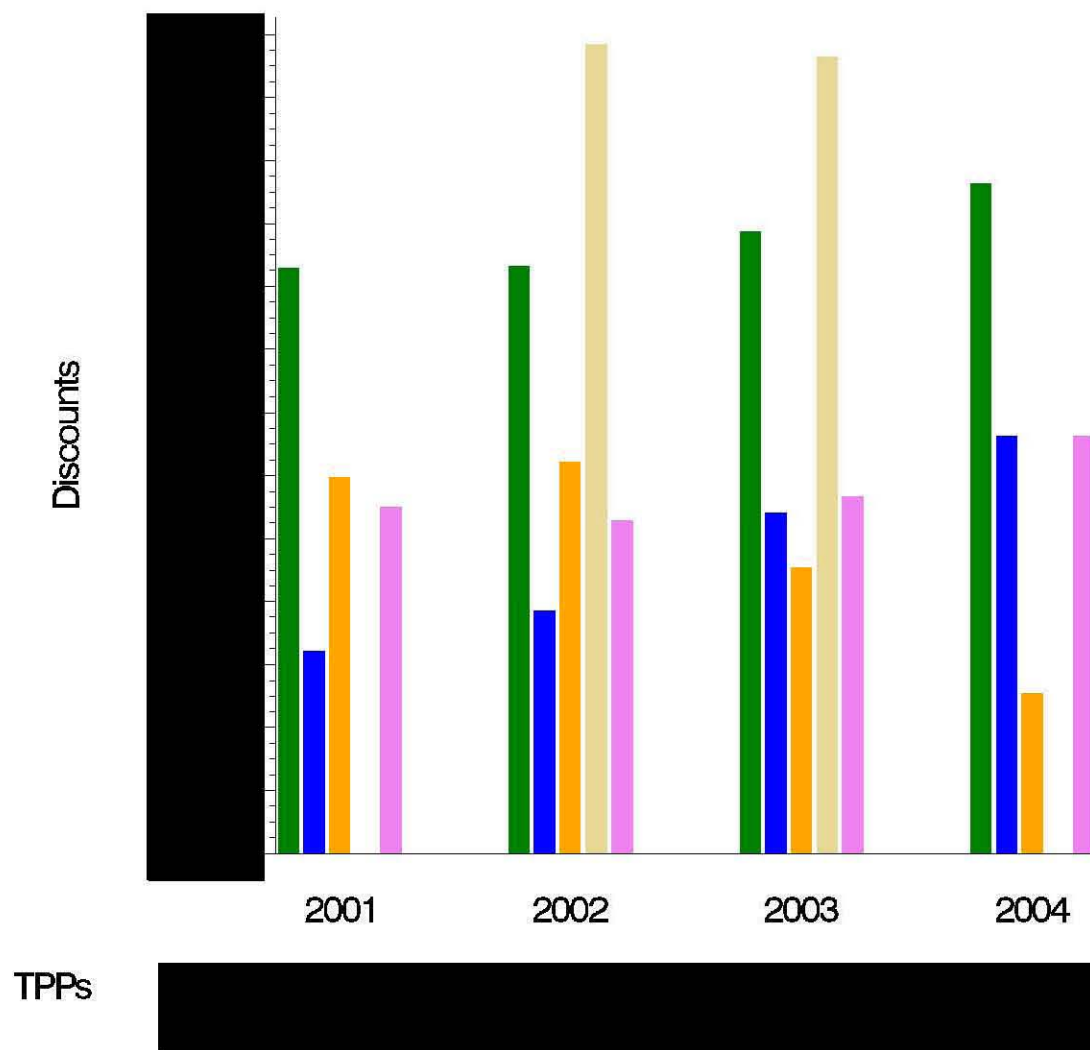


FIGURE 2C

Difference between TPP and IMS Effective Discounts (2001 – 2004)

Drug = PLAVIX Strength = 75MG

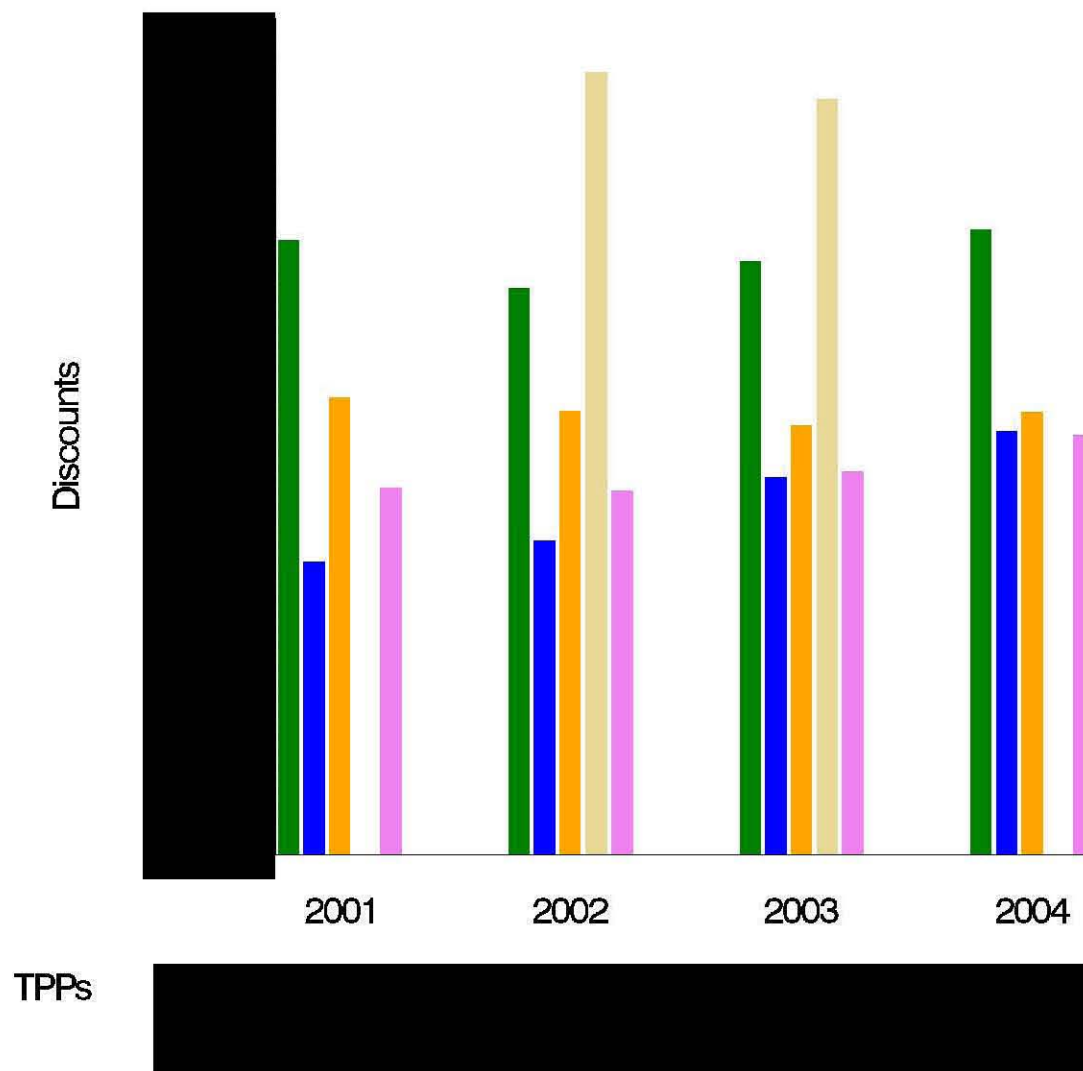


FIGURE 2D

Difference between TPP and IMS Effective Discounts (2001 – 2004)

Drug = PREVACID Strength = 30MG

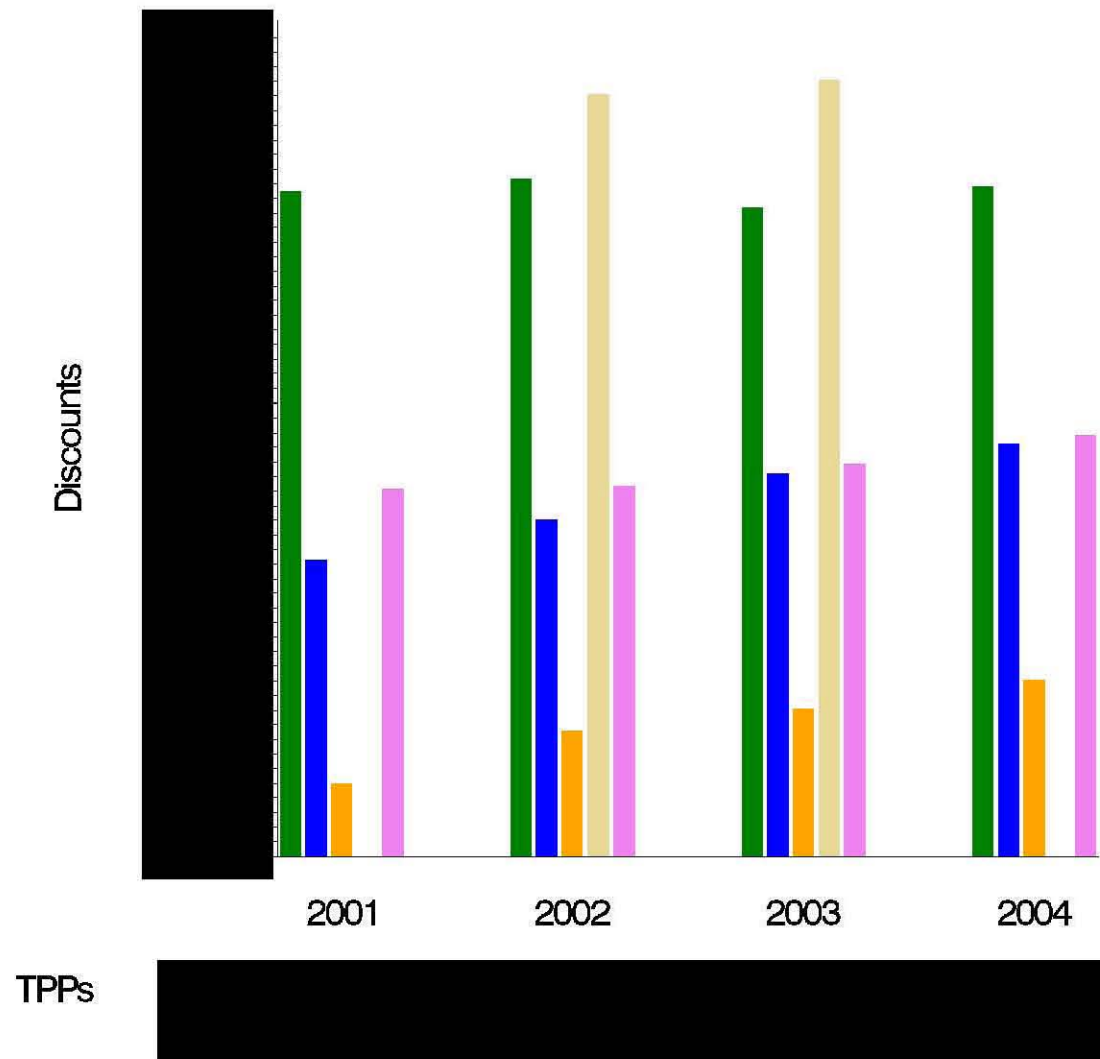
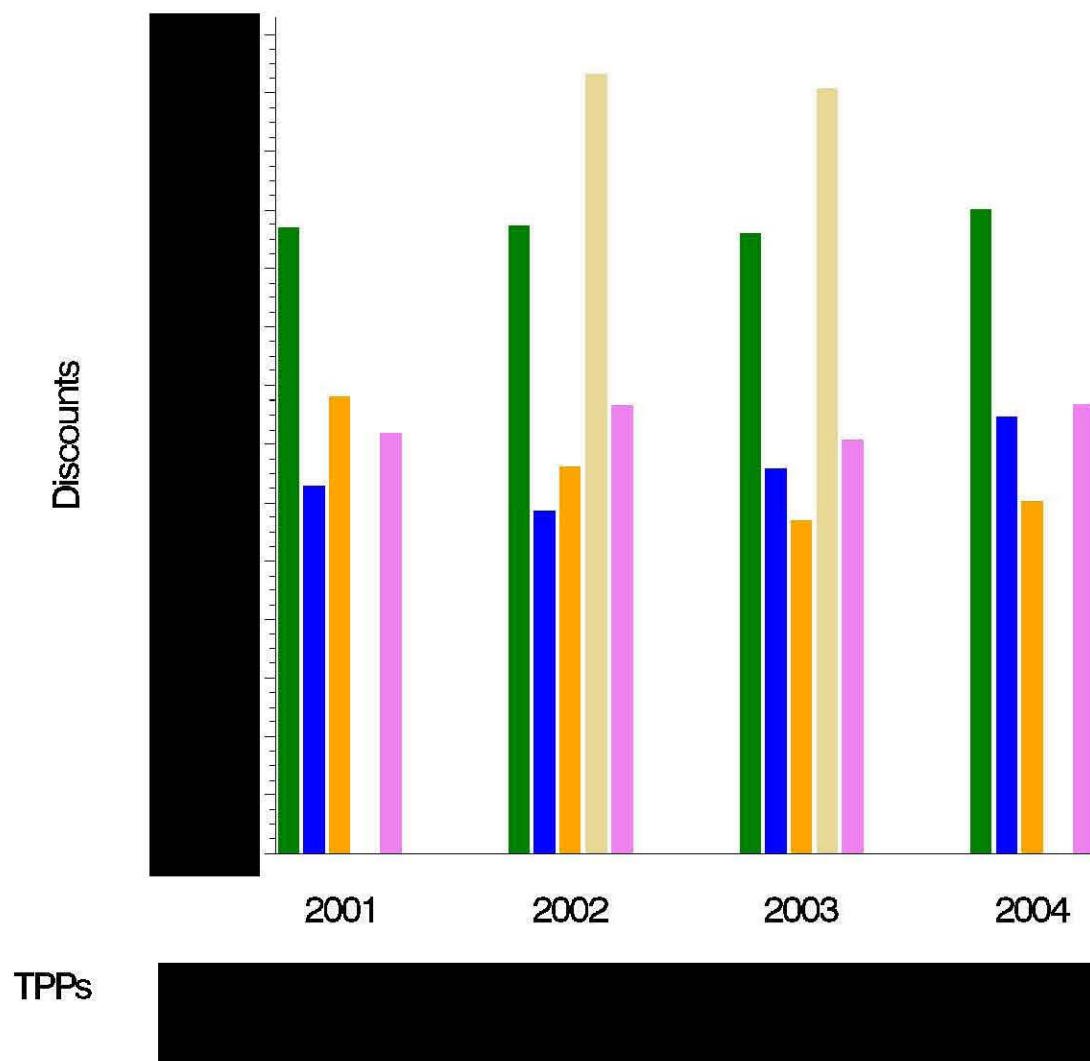


FIGURE 2E

Difference between TPP and IMS Effective Discounts (2001 – 2004)

Drug = WELLBUTRIN SR Strength = 150MG



APPENDIX 1

Appendix 1
Comparison of IMS and TPP Prices

Drug	Strength	Source	Prices				Differences between IMS and TPP Prices			
			2001	2002	2003	2004	2001	2002	2003	2004
ACIPHEX	20MG	AWP								
		IMS								
		Cigna								
		GE								
		Pirelli								
		Teachers								
ACTOS	30MG	Teamsters								
		AWP								
		IMS								
		Cigna								
		GE								
		Pirelli								
ACTOS	45MG	Teachers								
		Teamsters								
		AWP								
		IMS								
		Cigna								
		GE								
ADVAIR DISKUS	100-50	Pirelli								
		Teachers								
		Teamsters								
		AWP								
		IMS								
		Cigna								
ADVAIR DISKUS	250-50	GE								
		Pirelli								
		Teachers								
		Teamsters								
		AWP								
		IMS								
ALLEGRA	180MG	Cigna								
		GE								
		Pirelli								
		Teachers								
		Teamsters								
		AWP								
AMBIEN	10MG	IMS								
		Cigna								
		GE								
		Pirelli								

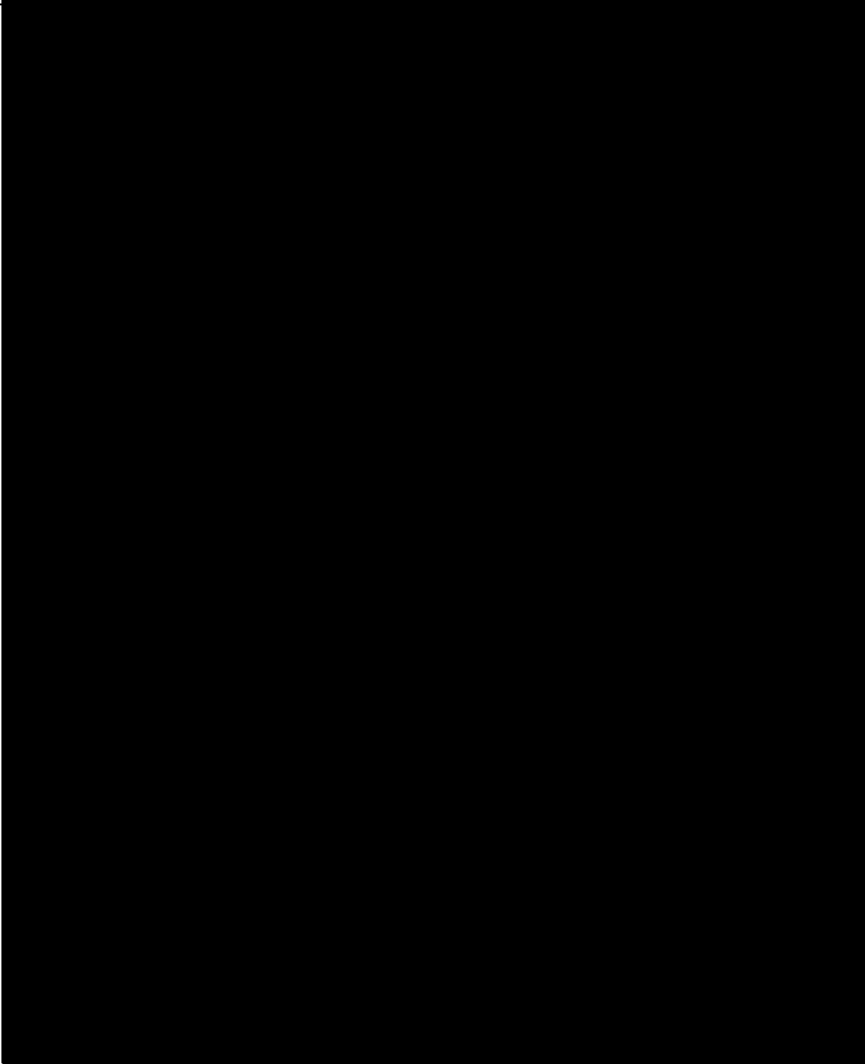
Appendix 1
Comparison of IMS and TPP Prices

Drug	Strength	Source	Prices				Differences between IMS and TPP Prices			
			2001	2002	2003	2004	2001	2002	2003	2004
CELEBREX	200MG	Teachers								
		Teamsters								
		AWP								
		IMS								
		Cigna								
ENBREL	25MG	GE								
		Pirelli								
		Teachers								
		Teamsters								
		AWP								
EVISTA	60MG	IMS								
		Cigna								
		GE								
		Pirelli								
		Teachers								
FLONASE	0.05%	Teamsters								
		AWP								
		IMS								
		Cigna								
		GE								
LAMISIL	250MG	Pirelli								
		Teachers								
		Teamsters								
		AWP								
		IMS								
LEVAQUIN	500MG	Cigna								
		GE								
		Pirelli								
		Teachers								
		Teamsters								
LIPITOR	10MG	AWP								
		IMS								
		Cigna								

Appendix 1
Comparison of IMS and TPP Prices

Drug	Strength	Source	Prices				Differences between IMS and TPP Prices			
			2001	2002	2003	2004	2001	2002	2003	2004
LIPITOR	20MG	GE Pirelli Teachers Teamsters								
		AWP IMS Cigna GE Pirelli Teachers Teamsters								
LIPITOR	40MG	AWP IMS Cigna GE Pirelli Teachers Teamsters								
		AWP IMS Cigna GE Pirelli Teachers Teamsters								
NASONEX	50 MCG	AWP IMS Cigna GE Pirelli Teachers Teamsters								
		AWP IMS Cigna GE Pirelli Teachers Teamsters								
NEURONTIN	300MG	AWP IMS Cigna GE Pirelli Teachers Teamsters								
		AWP IMS Cigna GE Pirelli Teachers Teamsters								
NEXIUM	40MG	AWP IMS Cigna GE Pirelli Teachers Teamsters								
		AWP IMS Cigna GE Pirelli Teachers Teamsters								
PLAVIX	75MG	AWP IMS Cigna GE Pirelli Teachers Teamsters								
		AWP IMS Cigna GE Pirelli Teachers Teamsters								
PREVACID	30MG	AWP								

Appendix 1
Comparison of IMS and TPP Prices

Drug	Strength	Source	Prices				Differences between IMS and TPP Prices			
			2001	2002	2003	2004	2001	2002	2003	2004
PRILOSEC	20MG	IMS								
		Cigna								
		GE								
		Pirelli								
		Teachers								
		Teamsters								
		AWP								
		IMS								
		Cigna								
		GE								
		Pirelli								
		Teachers								
		Teamsters								
PROTONIX	40MG	AWP								
		IMS								
		Cigna								
		GE								
		Pirelli								
WELLBUTRIN SR	150MG	Teachers								
		Teamsters								
		AWP								
		IMS								
		Cigna								
ZYPREXA	10MG	GE								
		Pirelli								
		Teachers								
		Teamsters								
		AWP								

APPENDIX 2

Appendix 2
Comparison of IMS and TPP Effective Discounts

Drug	Strength	Source	Effective Discounts				Differences between TPP and IMS Effective Discounts			
			2001	2002	2003	2004	2001	2002	2003	2004
ACIPHEX	20MG	IMS Cigna GE Pirelli Teachers Teamsters								
ACTOS	30MG	IMS Cigna GE Pirelli Teachers Teamsters								
ACTOS	45MG	IMS Cigna GE Pirelli Teachers Teamsters								
ADVAIR DISKUS	100-50	IMS Cigna GE Pirelli Teachers Teamsters								
ADVAIR DISKUS	250-50	IMS Cigna GE Pirelli Teachers Teamsters								
ALLEGRA	180MG	IMS Cigna GE Pirelli Teachers Teamsters								
AMBIEN	10MG	IMS Cigna GE Pirelli Teachers Teamsters								
CELEBREX	200MG	IMS Cigna GE Pirelli Teachers								

Appendix 2
Comparison of IMS and TPP Effective Discounts

Drug	Strength	Source	Effective Discounts				Differences between TPP and IMS Effective Discounts			
			2001	2002	2003	2004	2001	2002	2003	2004
ENBREL	25MG	Teamsters								
		IMS								
		Cigna								
		GE								
		Pirelli								
EVISTA	60MG	Teachers								
		Teamsters								
		IMS								
		Cigna								
		GE								
FLONASE	0.05%	Pirelli								
		Teachers								
		Teamsters								
		IMS								
		Cigna								
LAMISIL	250MG	GE								
		Pirelli								
		Teachers								
		Teamsters								
		IMS								
LEVAQUIN	500MG	Cigna								
		GE								
		Pirelli								
		Teachers								
		Teamsters								
LIPITOR	10MG	IMS								
		Cigna								
		GE								
		Pirelli								
		Teachers								
LIPITOR	20MG	Teamsters								
		IMS								
		Cigna								
		GE								
		Pirelli								
LIPITOR	40MG	Teachers								
		Teamsters								
		IMS								
		Cigna								
		GE								

Appendix 2
Comparison of IMS and TPP Effective Discounts

Drug	Strength	Source	Effective Discounts				Differences between TPP and IMS Effective Discounts			
			2001	2002	2003	2004	2001	2002	2003	2004
		Pirelli Teachers Teamsters								
NASONEX	50 MCG	IMS Cigna GE Pirelli Teachers Teamsters								
NEURONTIN	300MG	IMS Cigna GE Pirelli Teachers Teamsters								
NEXIUM	40MG	IMS Cigna GE Pirelli Teachers Teamsters								
PLAVIX	75MG	IMS Cigna GE Pirelli Teachers Teamsters								
PREVACID	30MG	IMS Cigna GE Pirelli Teachers Teamsters								
PRILOSEC	20MG	IMS Cigna GE Pirelli Teachers Teamsters								
PROTONIX	40MG	IMS Cigna GE Pirelli Teachers Teamsters								
WELLBUTRIN SR	150MG	IMS								

Appendix 2
Comparison of IMS and TPP Effective Discounts

Drug	Strength	Source	Effective Discounts				Differences between TPP and IMS Effective Discounts			
			2001	2002	2003	2004	2001	2002	2003	2004
ZYPREXA	10MG	Cigna GE Pirelli Teachers Teamsters								
		IMS Cigna GE Pirelli Teachers Teamsters								